

PART I - THE SCHEDULE

SECTION H – SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1. SPECIAL DEFINITIONS

- (a) The term "Act" means the West Valley Demonstration Project Act (P.L. 96-368), unless specifically identified otherwise.
- (b) The term "Records" means both Government-owned and contractor-owned records developed with Government funds.
- (c) The term "Project Premises" means the land as specified in the Cooperative Agreement.
- (d) The term "Project Facilities" means the facilities described in the Cooperative Agreement.
- (e) The term "Additional Facilities" means the facilities described in the Cooperative Agreement.
- (f) The term "NYSERDA" means the New York State Energy Research and Development Authority.
- (g) The term "Center" means the Western New York Nuclear Service Center at West Valley New York.
- (h) The term "WVDP" means the West Valley Demonstration Project.
- (i) The term "Cooperative Agreement" means the Cooperative Agreement entered into between DOE and NYSERDA effective October 1, 1980 as amended September 18, 1981.
- (j) The term "Retained Premises" means the land as specified in the Cooperative Agreement.
- (k) The term "DOE" means the Department Of Energy.
- (l) The term "CO" means the Contracting Officer.
- (m) The term "COR" means the Contracting Officer Representative.
- (n) The term "FAR" means the Federal Acquisition Regulation.
- (o) The term "DEAR" means the Department of Energy Acquisition Regulation.

- (p) The term "NEPA" means the National Environmental Policy Act of 1969.
- (q) The term "ISMS" means Integrated Safety Management System.
- (r) The term "ES&H" means Environment, Safety and Health.

H.2. PROGRAMMATIC RISKS AND UNCERTAINTIES

- (a) Completion of the PWS will require the DOE and the Contractor to successfully resolve, mitigate, eliminate, or avoid many types of risk. Risks to the workers, public, and the environment are managed through the Environment, Safety and Health (ES&H) Program and Integrated Safety Management (ISM) Program identified in Section C.1.4.1. Risks to project schedule and cost shall be managed within the Project Control System identified in Section H.15. The Contractor shall incorporate the risk mitigation alternatives in the Risk Management Plan described in Section H.15 to manage other project and regulatory uncertainties. The Risk Management Plan shall be included as part of the project baseline documents required in Section H.15 and it shall be updated at least annually. Justification shall be provided for any changes to the Risk Management Plan submitted with the project baseline 60 days after contract award from the Risk Management Plan submitted with the proposal.
- (b) The Contractor shall identify significant project and regulatory uncertainties contained within the PWS that, in its opinion, provide a significant risk to cost and schedule. The Contractor shall describe its approach to eliminate, avoid or mitigate these risks in the Risk Management Plan. The Contractor shall implement the actions described and eliminate, avoid or mitigate the risks during performance of the contract.
- (c) When developing approaches to eliminate, avoid or mitigate risks to cost and schedule, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. This can result in the Contractor assuming total responsibility, the DOE assuming total responsibility, or a clearly defined method of sharing risk responsibility between the DOE and the Contractor.

H.3. MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this Contract, the Contracting Officer (CO) shall be the only individual under this Contract authorized to:

- (a) Accept nonconforming material,
- (b) Waive any requirement of this Contract, or
- (c) Modify any term or condition of this Contract.

H.4. DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE COR. The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual PWS.
 - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the DOE.
- (b) The Contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the PWS;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must

not proceed and must notify the CO in writing within five working days after receipt of any such instruction or direction and must request the CO to modify the contract accordingly. Upon receiving the notification from the Contractor, the CO must:

- (1) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the DOE will issue a written change order; or
 - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and CO either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect the technical direction will be subject to the provisions of the clause entitled "Disputes."

H.5. DOE CONTRACT ADMINISTRATION AND OVERSIGHT

- (a) The WVDP presents significant work scope challenges to the Contractor, and makes it imperative that the DOE has a focused approach for providing oversight of Contractor work. This approach shall provide effective DOE oversight of project work, yet it must not present the Contractor with burdensome or "non-value added" work related distractions. The DOE oversight approach shall include reviews of periodic progress reports submitted by the Contractor and direct observation by DOE employees of Contractor work in progress.
- (b) The DOE oversight activities will focus primarily on a safe, accelerated clean-up of the WVDP. The DOE oversight will be conducted in a tailored and proactive manner with minimal interference with project progress. The Contractor shall respond to DOE oversight and to concerns, findings and observations as identified by the CO or COR during the conduct of these oversight activities. The areas of oversight are:
 - (1) Project Management Oversight: This includes daily field inspections and the monthly assessment of project status, which will be used to determine and validate project performance.
 - (2) Contract Management Oversight: Administration and monitoring of the prime contract will be in accordance with the contract terms and conditions which include, but are not limited to, the oversight required

under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.

- (3) Financial Management Oversight: The DOE will review all budgetary data submitted by the Contractor to be provided into the Integrated Planning, Accountability, and Budgeting System (IPABS). The DOE will review the status of all designated Ohio management commitments. The DOE will monitor and audit Contractor funds management practices and procedures to ensure compliance with applicable regulations and statutes.
- (4) Daily Oversight: The DOE Project Director, Facility Representatives and/or Subject Matter Experts will conduct daily oversight and assessments. The purpose of these contacts will be to assess performance. In addition to this daily involvement, the Contractor shall support:

Management walkthroughs conducted in areas of the project or locations where work is ongoing.

Specific tours of buildings during the decontamination activities or just prior to demolition, removal or soil excavations.

Periodic walkthroughs by the regulators, site/facility owner or DOE Headquarters personnel.

Employee concerns elevated to the DOE for evaluation.

H.6. STOP-WORK AND SHUTDOWN AUTHORIZATION

- (a) All Contractor and the Department of Energy (DOE) employees have the right to stop any activity, regardless of who is performing the activity, if continuation of that activity would be considered an imminent health and safety hazard.
- (b) “Imminent Health and Safety Hazard” is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals.
- (c) Stop-Work: In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment.

In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official who will direct the stop work or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the Contracting Officer.

- (d) Contractor and the Department of Energy (DOE) employees have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to the Facility Safety Envelope.
- (e) “Imminent Danger in relation to the Facility Safety Envelope” is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Radiation Exposure, (2) Fire/Explosion, and/or (3) Hazardous Chemical Exposure.
- (f) Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line management or operators, facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Project Director. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F clause entitled FAR 52.242-15 Stop Work Order.
- (g) Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which may apply to the suspension of operations of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the FR believes:
 - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (h) The CO may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.

- (i) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute “contractor representatives” for “the Contracting Officer” in all subcontracts.

H.7. KEY PERSONNEL

The personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. The Contracting Officer is to be notified reasonably in advance of diverting of, or substitution for, any of these individuals. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. Whenever, for any reason, one or more of the following employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee of substantially equal abilities and qualifications with meritorious consideration of increasing opportunity to fully use the talents and capabilities of a diverse workforce. The clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

NAME	TITLE
_____	_____
_____	_____
_____	_____
_____	_____

H.8. CONTRACTOR PROJECT MANAGER

- (a) The Contractor shall designate a Project Manager, and may also designate an alternate Project Manager who will be the Contractor’s authorized supervisor(s) for technical and administrative performance of all work performed under the contract. The Project Manager shall be the sole point of contact between the Contractor and the COR under this contract unless an Alternate Project Manager has been designated and approved by DOE. Project Manager responsibilities are non-delegable unless approved in advance by DOE, or delegated to the approved Alternate.

- (b) The Contractor's Project Manager shall receive and execute, on behalf of the Contractor, such technical directions as the CO or COR may issue within the terms and conditions of the contract.

H.9. WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS AND PENSION

- (a) Incumbent Employees Hiring Preferences: The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to qualified Incumbent Employees (see definition in (b).(1) below). This requirement does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).
- (b) Employee Pay and Benefits.
 - (1) Incumbent employees are the employees who are on the regular payroll of the incumbent contractor, West Valley Nuclear Services Company LLC, at the time that the responsibility for contract performance is assumed by the successor contractor.
 - (2) Non-incumbent employees are new hires, i.e., employees hired by the Contractor after the Contractor assumes responsibility for contract performance.
 - (3) The Contractor shall provide equivalent pay and comparable benefits to incumbent employees. Incumbent employees shall remain in their existing pension plans pursuant to pension plan eligibility requirements and applicable law. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance. Comparability of the total benefit package shall be determined by the contracting officer in his/her sole discretion.
 - (4) All new (non-incumbent) employees shall receive an overall benefit package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees. Contractors shall develop and implement welfare benefit programs that meet the test of allowability established by FAR 31.205-6 as supplemented by DEAR 970.3102-5-6.
 - (5) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on Contracting Officer approval of Contractor actions pursuant to an approved "Employee Benefits Value

Study” and an “Employee Benefits Cost Survey Comparison.” No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the contracting officer makes a determination of cost allowability for reimbursement for new or changes benefit plans.

- (6) The Contractor shall submit within 30 days of Contract award, a *Human Resources Compensation Plan* demonstrating how the Contractor will comply with the requirements of this contract. The *Human Resources Compensation Plan* shall describe the Contractor’s policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
- (7) The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with FAR 31.205-6, and DEAR 970.3102-05-6, “Compensation for Personal Services,” as applied to the DOE-approved Directives in Section J, Attachment J-1. The Contractor’s compensation system and methods shall be in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

Until DOE has certified the Contractor’s compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

- (i) Any additional Compensation System self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Compensation System.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions for the Key Personnel including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

Upon certification of the Contractor’s Compensation System, Contracting Officer approval of individual compensation actions will be required only

for the Project Manager and other Key Personnel, if any, and those other first-tier reports to the aforementioned positions, as identified by the Contracting Officer.

- (8) Severance pay benefits are not payable to an employee under this contract if the employee:
 - (i) Voluntarily separates, resigns or retires from employment,
 - (ii) Is offered employment with a successor/replacement Contractor,
 - (iii) Is offered employment with a parent or affiliated company, or
 - (iv) Is discharged for cause.

Service credit for purposes of determining severance pay does not include any period of prior service at a DOE facility for which severance pay has been previously paid.
- (9) The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:
 - (i) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
 - (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
 - (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
 - (iv) A Self-Assessment of the total compensation program.
- (10) DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of Contractor self-assessments of compensation system performance, or third party expert review.
- (c) Pension and Other Benefit Programs: Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and prior to implementation of any benefit change, the Contractor shall submit (1) and (2) below:

- (1) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks for nationally recognized and Contracting Officer approved survey sources and,
- (2) An Employee Benefits Cost Comparison (cost comparison) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

This information shall be submitted to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to FAR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (3) When net benefit value and/or per capita cost of the total benefits package exceed the comparator group by more than 5 percent, submit a corrective action plan, when requested by the Contracting Officer.
- (4) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (5) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (c)(3).
- (6) Submit the Report on Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 15 of the current calendar year.

(d) Pension Plans

- (1) The Contractor shall establish or maintain a separate pension plan(s), distinct from any corporate or other pension plan, meeting the requirements of the IRC and ERISA, that recognizes service credit

earned under the Westinghouse Government Service Group West Valley Pension Plan.

- (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.
- (3) Each pension plan shall cover only Contractor employees working under the West Valley Demonstration Project Interim End State Completion contract and shall stand alone as a separate pension plan distinct from a Contractor's corporate or other pension plan.
- (4) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following within nine months of the last day of the current pension plan year.
 - (i) Copies of IRS forms 5500 with schedules;
 - (ii) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (5) The Contractor shall submit the information required under (i) and (ii), below, as applicable, prior to the adoption of any changes to the pension plan, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
 - (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value must be provided; and,
 - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (6) At contract expiration or termination as a part of the transition to another entity awarded the successor contract, the Contractor shall transfer sponsorship of the site-specific pension plan(s) covering employees

under the Westinghouse Government Service Group West Valley Pension Plan, as directed by DOE.

- (7) Pension Plan Terminations. The Contractor shall not terminate any pension plan (commingled or site-specific) without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.
- (8) Post-Contract Responsibilities for Pension and Benefit Plans. If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause of the contract Section I clause, FAR 52.249-6, "Termination," the following actions shall occur:
 - (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
 - (ii) During the final 12 months of this contract, if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
 - (iii) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

H.10. LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to self-organization and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of these activities. The Contractor shall develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds.
- (b) Consistent with applicable labor laws and regulations, the Contractor shall recognize and bargain in good faith with the collective bargaining

representative of employees performing work that has historically and traditionally been performed by International Association of Machinist and Aerospace Workers - Lodge 2401 members. The Contractor shall provide the Contracting Officer with a copy of the collective bargaining agreement within 60 days after formal ratification.

- (c) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (d) The Contractor shall consult with the Contracting Officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.
- (e) The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding any labor relations developments at the prime or subcontract level that involve or appear likely to involve:
 - (1) Possible strike situations affecting the facility;
 - (2) Referral to the Energy Labor-Management Relations Panel;
 - (3) The National Labor Relations Board at any level;
 - (4) Recourse to procedures under the Labor-Management Act of 1947 as amended, or any other Federal or state labor law; and
 - (5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.
- (f) "Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

H.11. WORKFORCE RESTRUCTURING

When the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer and seek approval, if required under applicable

DOE guidance as may be amended from time to time. The Contractor shall provide such information as directed by the Contracting Officer to ensure compliance with state and federal regulations and DOE guidance as may be amended from time to time. The Contractor shall not use early retirement incentives for workforce restructuring.

H.12. AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations there under. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations under such laws.

H.13. GOVERNMENT FURNISHED SERVICES AND ITEMS

The DOE and the Contractor recognize that implementation of the PWS in an optimized fashion is dependent upon many activities, including the Government Furnished Services and Items (GFS/I) identified below.

Table H-1 provides a description of the GFS/I to be furnished under this contract. The Contractor's proposal shall be based solely on the GFS/I listed in Table H.1. DOE is committed to providing effective support to the Contractor throughout the period of Contract performance, and the Contractor may request that DOE consider providing additional GFS/I. To manage the GFS/I to be furnished under the Contract and to evaluate the additional GFS/I that may be required by the Contractor, the Contractor shall submit for DOE approval:

- GFS/I Request: a 12-month advance projection of GFS/I to be furnished under the Contract, to be submitted within 60 days of contract award and prior to each fiscal year; and
- GFS/I Update (if needed): a quarterly update to the projection of GFS/I to be furnished under the Contract, to be submitted prior to each quarter.

DOE will review the GFS/I Request and GFS/I Update. If DOE can support the additional Contractor-requested GFS/I, DOE will notify the Contractor within 30 days that the additional Contractor-requested GFS/I can be provided, and will provide the Contractor details regarding the DOE action(s). The supported GFS/I will be added to Table H.1, Detailed Description of Government Furnished Services and Items, as a DOE commitment to the Contractor.

If DOE cannot support a Contractor request, DOE will notify the Contractor within 30 days that the requested GFS/I cannot be provided, and there will be no DOE commitment to the Contractor to furnish the GFS/I.

For the additional Contractor-requested GFS/I, DOE will use its best efforts to meet additional GFS/I commitments to the Contractor. However, in the event that DOE is unable, for any reason, to provide the Contractor with its requested additional GFS/I, the Contractor remains fully and solely responsible for obtaining the needed services and/or information in a timely manner and without any further recourse against DOE. Other property provided by the Government is identified in Section J, Attachment J-3.

Table H.1 DETAILED DESCRIPTION OF GOVERNMENT FURNISHED SERVICES AND ITEMS		
Scope	Requirement	GFS/I
The Contractor shall support DOE EM by performing infrastructure support as described in Section C, PWS.	DOE shall ensure Government controlled data systems are available for Contractor access as needed to provide infrastructure activities	<p>DOE will ensure the following systems are available to the Contractor throughout the period of performance of this contract:</p> <p>Integrated Planning Accountability and Budget System (IPABS)</p> <p>Facility Information Management System (FIMS)</p> <p>Computerized Accident/Incident Reporting System (CAIRS)</p> <p>Non-Compliance Tracking System (NTS) database</p> <p>Occurrence Reporting and Processing System (ORPS)</p> <p>Foreign Access Central Tracking System (FACTS) database</p> <p>Federal Telephone System Access</p> <p>Condition Assessment Information System (CAIS)</p> <p>Work Force Information System (WFIS)</p>

The Contractor shall submit documentation, reports, etc., to DOE during performance of the activities in the PWS.	DOE shall provide comments and/or approval of documentation, reports, etc.	DOE will use its best efforts to provide comments and/or approval of documentation, reports, etc., in a timely manner. Typical response times include: Project Baseline: 30 business days Baseline Changes: 30 business days Regulatory Submittals (with the exception of the RCRA Part B Permit Application): 30 business days General Correspondence: 5 business days Project Plans: 20 business days
The Contractor shall store, characterize, process, package, ship and dispose of waste in accordance with applicable laws, regulations and DOE directives.	DOE shall provide disposal rates and requirements for waste disposal using an Envirocare contract or the Nevada Test Site (NTS).	DOE will provide the Envirocare contract for use as deemed necessary by the Contractor. DOE will provide the NTS estimated disposal rates annually by September 30. Final disposal rates for NTS will be provided annually in the January timeframe.
The Contractor shall ship the TRU waste offsite for storage or disposal, or store the TRU waste onsite, as determined by DOE.	DOE will determine the disposition strategy for the TRU waste (either shipment to WIPP for disposal, shipment offsite for storage, or storage onsite).	DOE will make a decision and will provide information on the disposition strategy for the TRU waste by December 31, 2008.

H.14. RESERVED**H.15. PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS****Project Control System**

- (a) The Contractor shall establish, maintain and use a project control system that is tailored based on the project's size, risk and complexity. Project documentation requirements are tailored by degree of detail, not omitted entirely. The project control system shall reflect the project status relative to cost and schedule performance, and tracks changes to the baseline. This system shall be fully integrated with the financial accounting systems on site to ensure consistent reporting of costs. The Contractor shall maintain a project control system in accordance with the following requirements:

- (1) Attachment 1 to DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets, October 13, 2000 and its implementing manual, DOE Manual 413.3-1.
- (2) Integrated Planning, Accountability, and Budgeting System Information Systems (IPABS-IS) Data Requirements, February 16, 1999.
- (b) The Contractor shall provide the Contracting Officer with a detailed written description of the proposed project control system for review and approval within sixty (60) days after award of this contract. Cost effective, graded application of controls will be a critical factor in determining acceptability of the proposed system.
- (c) The DOE Contracting Officer Representative (COR) or designated representatives will conduct a compliance review of the Contractor's proposed project control system to determine if the description and procedures meet the intent of this contract clause.

Baseline Development and Cost Collection

- (a) The Contractor shall develop and submit a baseline consistent with the terms and conditions of this contract and their proposal within sixty (60) days after award. The baseline shall be developed in accordance with DOE Order 413.3 and include all of the scope identified in the Performance Work Statement (PWS). The Work Breakdown Structure (WBS) shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract. The Contractor shall propose a WBS and dictionary that represents the Performance Work Statement.
- (b) The Contractor shall develop a Risk Management Plan (RMP) that identifies internal and external risks to achieving the project baseline (including those identified in accordance with Section H.2). The RMP will define and analyze risks and provide a quantitative assessment of potential cost and schedule impacts, as well as document what actions have been taken to mitigate potential impacts to scope execution. The Contractor shall provide its assessment of the impact these uncertainties may have on project cost and schedule. If, in the Contractor's opinion, the risk to cost and schedule is significant, the Contractor shall describe its approach to eliminate, avoid, or mitigate the risks. When developing approaches to eliminate, avoid or mitigate risks to cost and schedule, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. The RMP shall be updated at least annually.
- (c) Cost estimates shall be integrated with the WBS and use estimating methodologies consistent with DOE Order 413.3. Costs shall be discernable by

direct, indirect and fee. The project control system must maintain capability to provide total estimated cost (TEC), total project cost (TPC), estimates-to-complete (ETC), and estimates-at-completion (EAC).

- (d) Schedules shall be developed that integrate with the WBS. All project work scope shall be included regardless of funding source. Each WBS element will have assigned duration that will be based on work scope. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. Activities shall be resource loaded at the lowest practical level of the WBS to develop time-phased budgets that are integrated with the schedule. Labor resources shall be loaded based upon a staffing analysis. Float analysis will be summarized at the total project level.
- (e) The Contractor shall analyze DOE proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline, along with potential impacts to the total estimated cost and schedule of the contract.
- (f) Any Contractor requested changes or DOE directed changes shall be addressed through the established change control process. This process will not, in and of itself, have the authority to change the total estimated cost or schedule of the contract.
- (g) Prior to the release of funds for each fiscal year, DOE will analyze the baseline for that fiscal year. By June 30 each year DOE will provide an estimate of any budget restrictions or specific technical or schedule guidance for the upcoming fiscal years through the remainder of the project.
- (h) The Contractor shall prepare a project performance forecast for all upcoming fiscal years from the approved project baseline. The Contractor shall submit budget allocations to each WBS element for the upcoming fiscal year with a focus on differences to the work activities described in the project baseline for that specific year. The Contractor shall comply with DOE issued Financial Plans that establish appropriation obligational control points (i.e., specific types of funding) in the performance of this contract.
- (i) The Contractor shall provide variance justification for differences between planned and actual performance against the total project baseline and the estimated cost and schedule. Performance analysis techniques shall be documented using earned-value methods as described by ANSI/EIA 748-A-1998. This performance data shall be reported to DOE. Performance metrics (i.e., quantities) are preferred for all technical work scope unless otherwise approved by the Contracting Officer. For variances greater than 10%, the analysis shall detail the causes for variance, impact on other WBS elements and corrective action required.

- (j) The EAC for the project shall be evaluated quarterly to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.
- (k) All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance is measured and recorded. Any indirect costs shall also be collected and appropriately allocated to the WBS elements. The Contractor must also maintain a proper accounting system that is separate and distinct from its project control system.
- (l) Costs shall be collected at a charge number level and be able to be summed through the WBS. Mischarges on time cards or other administrative or accounting errors shall be corrected in a timely manner.

Project Reporting

- (a) The Contractor shall provide monthly status reports of the WBS in a format approved by the Contracting Officer. The status shall include cost and schedule variance at a suitable WBS level with rollup to the applicable Project Baseline Summary (PBS), the status of major milestones, and critical technical or programmatic issues. This report shall also include overall narrative summaries, analysis of schedule trends and project float, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates.
- (b) Plans and reports shall be prepared in such a manner as to provide for consistency with the contract PWS, the baseline, and the approved WBS. The Contractor's reporting system shall be able to provide for the following at the total WBS level:
 - (1) Timely incorporation of contractual changes affecting estimated cost and schedule
 - (2) Reconciliation of estimated costs for those elements of the WBS with current performance measurement budgets in terms of changes to the authorized work and internal re-planning
 - (3) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments
 - (4) Revisions to the contract estimated costs for Government-directed changes to the contractual effort.

- (c) The Contractor shall provide the Contracting Officer, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system. Generally, access will not be requested more than one level below the level chosen by the Contracting Officer for control and approval authority, except during compliance reviews.
- (d) The Contractor shall include graded reporting requirements in all subcontracts adequate to fairly evaluate performance and support the Contractor's reporting requirements.

Baseline Change Management

- (a) The baseline is the source document for all project control and baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes shall be proposed when:
 - (1) Necessitated by project delays, events or other impacts outside the control of the Contractor that result in an impact to the Contractor's ability to meet the overall target cost and schedule and target fee structure;
 - (2) The parties have negotiated an equitable adjustment in accordance with the section I clause entitled, "Changes-Cost-Reimbursement" or other clauses of this contract;
 - (3) NOTE: Cost and schedule variances do not constitute or necessitate a baseline change.
- (b) Provided that the change does not affect total cost or schedule for the reasons stated above, the baseline change control thresholds for scope, cost and schedule shall be the lesser of the following:

DOE Headquarters	\$10,000,000 or 20% of the WBS annually
Local DOE	\$ 5,000,000 or 10% of the WBS annually
Contractor	Up to the local DOE Level

Additional work scope can only be authorized by the Contracting Officer regardless of the threshold level.

- (c) In some circumstances the Contractor may exceed authorized budget levels for a WBS when a baseline change is not warranted, such as for cost overruns. The current year ETC Analysis shall track and manage changes in funding at each WBS level.

- (d) Specific change control time frames for consideration and approval will be established by the Contracting Officer. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes, at any level, shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of Change Control Board records and project management records resides with DOE.
- (e) Any changes to cost, schedule or fee shall be executed only through a contract modification by the Contracting Officer pursuant to the contract terms and conditions. Baseline changes will not imply the need for changes to cost, schedule or fee.

H.16. STAKEHOLDER INTERACTION

The Contractor shall, in addition to its own employees, engage in cooperative interactions through and with these organizations, including but not limited to:

U.S. Nuclear Regulatory Commission (NRC)
 U.S. Environmental Protection Agency (USEPA)
 New York State Department of Environmental Conservation (NYSDEC)
 New York State Energy Research and Development Authority (NYSERDA)
 Occupational Safety and Health Administration (OSHA)
 Department of Energy Environmental Management Consolidated Business Center (EMCBC)
 Department of Energy Ohio Field Office (DOE-OH)
 Department of Energy Headquarters (DOE-HQ)
 Congressional Staff
 U.S. Department of Labor (DOL)
 Inspector General (IG)
 U.S. Attorney's Office
 Government Accountability Office (GAO)
 Defense Contract Audit Agency (DCAA)
 West Valley Citizens Task Force
 Coalition on West Valley Nuclear Wastes
 Seneca Nation of Indians
 Local Emergency Responders and Law Enforcement
 Other State and Federal Agencies, as applicable.

H.17. PAPERLESS DIRECTIVE PROCESSING SYSTEM

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE Orders and other Directives applicable to contractors, with the applicable departmental policies, plans,

programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the CO or designee.

- (b) DOE has developed a list of applicable DOE Directives, and is appended to the Contract as Section J, Attachment J-1. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The Baseline List of Directives Applicable to the Contract will be revised and issued, by the DOE CO, as a contract modification, as necessary. The CO may direct the Contractor to comply with additional DOE directives and local directives and revisions thereto, as follows:
 - (1) Pursuant to and in accordance with the "Changes" clause of the contract with respect to changes in directives within the general scope of this contract,
 - (2) Pursuant to any Environment, Safety, and Health provisions of this contract, and in accordance with the Changes clause of this contract with respect to changes in directives involving safety, environment, health and quality.
- (d) At least once a month, the Contractor will extract directives from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting. Copies of DOE directives may be obtained without charge from the CO or by citing the number of this contract in a written request sent to the following address:

US DOE
Distribution Section
Forrestal Building
Washington, DC 20585
- (e) The CO and his/her representative(s) expressly authorized in writing to do so are the only government officials authorized to provide explanations as to the applicability of directives. The CO is the only Government Official authorized to resolve possible conflicting requirements involving directives.
- (f) Upon receipt of a new or revised directive, the Contractor shall review it for consistency with the other terms of this contract and for impacts on funding, manpower and other provisions of the contract. If the Contractor considers the directive to be consistent with the other terms of this contract and it can be implemented within existing funds, manpower, and other provisions of the contract and the implementation will not have a negative impact on the cost,

schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise the CO within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this contract or the requirements of the directive cannot be implemented within existing funding, manpower, and other provisions of the contract, the Contractor shall so advise the CO within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, manpower, and other provisions of the contract. After evaluation of the Contractor's position, the CO shall issue direction to the Contractor, pursuant to the clause entitled "Changes" concerning appropriate implementation of the directive.

- (g) The Contractor will, at least quarterly, notify DOE of those Directives extracted. The Contractor cognizant personnel will review these Directives and recommend for concurrence disposition of the Directives to DOE-WV.
- (h) Upon agreement between the Contractor and DOE, the Directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the Directive added to the Baseline List of Directives Applicable to the Contractor and issued by the CO. The same process will be utilized for deletion of Directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the CO.

H.18. PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I, FAR 52.224-2 -- Privacy Act.

<u>DOE System</u>	<u>Title/Number</u>
DOE-05	Personnel Records of Former Contractor Employees
DOE-15	Payroll, and Pay Related Data for Employees of Terminated Contractors
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-40	Contractor Insurance Claims
DOE-43	Personnel Security Clearance Files
DOE-51	Employee and Visitor Access Control Records

The above list shall be revised from time to time by the CO as may be necessary to keep it current. Such changes will be formally incorporated by modification.

H.19. PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall maintain an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking, reporting and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall be accountable for ensuring that subcontractors adhere to the PAAA requirements.

H.20. DISPOSITION OF INTELLECTUAL PROPERTY- FAILURE TO COMPLETE

- (a) In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for the design, construction, operation, cleanup and closure of the facility, subject to the Rights in Data - Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for the design, construction, operation, cleanup and closure of the facility.
- (b) Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, operation, cleanup and closure of the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future contractors for the design, construction, operation, cleanup and closure of the facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the design, construction, cleanup and closure of the facility to DOE or such other third party as DOE may designate.
- (d) The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H.21. COMPLIANCE WITH FIPS PUB 201

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal agency's computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201,

and FIPS Pub 201 shall take precedence over any conflicting performance requirement of this contract. Should the Contractor find that the Performance Work Statement or specifications of this contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions of the Contracting Officer.

H.22. INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The representations, certifications, and other statements of offeror, completed by the Contractor, and dated _____(TBD)_____, are hereby incorporated by reference.

H.23. STANDARD INSURANCE REQUIREMENTS

In accordance with FAR clause 52.228-7, entitled "Insurance - Liability to Third Persons," the following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) Worker's compensation and employer's liability insurance:
 - (1) The amount required by the state in which work is performed under applicable workers' compensation and occupational disease statutes.
 - (2) Employer's liability insurance in the amount of \$100,000.
- (b) General liability insurance. Bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- (c) Automobile liability insurance. Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

H.24. WAGE DETERMINATION RATES

In the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination in Part III, Section J, Attachment J-4, U.S. Department of Labor Wage Determination. Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years but not more often than yearly.

H.25. LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2006)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before congress, other than to communicate to members of congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.26. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.27. ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY

- (a) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health or quality requirements shall be borne by the party that causes the violation (contractor's, subcontractors, teaming partners, joint ventures, etc.). This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fines or penalties upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit application, manifest, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- (b) Regardless of which party to this contract is the named subject (Contractor or DOE) of an enforcement action for compliance with the environmental, safety, and health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor action or inactions, is the responsibility of the Contractor and not reimbursable under this contract. Any fines and penalties incurred by DOE as a result of Contractor actions or inactions will be reimbursed to DOE and are also unallowable. Cost of fines and penalties resulting from violations of, or the Contractor failure to comply to comply with federal, state, local, or foreign laws and regulations are unallowable except under the conditions stipulated at FAR 31.205-15.

H.28. PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS

- (a) Consistent with the FAR clause 52.236-7 "Permits and Responsibilities," in Section I, the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor

shall be responsible for becoming a party to all regulatory compliance agreements associated with the scope under this contract including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as "permits"). Section C, Attachment C-7, describes permits currently held by WVDP. Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as co-operator or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such documents with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility as operator for such permits, and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

H.29. ACCESS TO AND OWNERSHIP OF RECORDS

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor in accordance with federal requirements established by the National Archives and Records Administration or as the CO may from time to time direct during the progress of the work or, in any event, as the CO shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause. However, records may be audited by DOE under the clause in Section I, entitled "Audit and Records – Negotiation."
 - (1) Employment-related records (including but not limited to the following: workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records as published in Federal Register system notices by DOE;
 - (2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor;
 - (3) Records relating to any procurement action by the Contractor; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection,

copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the Contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention/disposition standards. Special records retention standards, described in DOE Order 200.1, Information Management Program, as directed by the National Archives and Records Administration in 36 CFR 1200, are applicable for the classes of Government owned records as described in paragraph (a) above. Records will be destroyed as appropriate based on guidance directed in 36 CFR 1200 or as directed by the CO or his representative. The Contractor will also be required to comply with any additional records retention guidance established by DOE.
- (g) As directed by the CO, the Contractor shall grant access to all DOE records in its possession as may be required in conduct of normal DOE business. If any inspection or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the convenience of the Government representatives in the performance of their duties.
- (h) Subcontracts. The Contractor shall include the requirements of this clause in all subcontracts.

H.30. LEGAL MANAGEMENT PLAN

- (a) The Contractor shall comply with all requirements of 10 CFR 719. As part of that compliance, the Contractor shall submit a Legal Management Plan in accordance with 10 CFR 719, and include the item set forth in 10 CFR 719.10 to the Contracting Officer for approval within sixty (60) days of contract award.
- (b) The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. In doing so, the plan shall describe the matters in-house counsel will perform as well as anticipates performing throughout the life of the contract. The Contractor should not retain outside counsel for matters that can be performed by in-house counsel. Within this plan, the Contractor will promise to compare rates of retained legal counsel with the rates of firms in the Greater Buffalo area. Once approved by the Contracting Officer, the Plan, as well as applicable regulations

and contract provisions, forms the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses performed by retained legal counsel. The Plan may be revised from time to time to conform to legal management rules or policies established or adopted by the Department of Energy.

H.31. AWARD FEE PLAN

- (a) The determination of award fee shall be based upon an award fee plan, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. The award fee plan will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor 30 calendar days prior to the start of the first evaluation period.
- (b) The award fee plan will set forth the evaluation period and the criteria upon which the Contractor will be evaluated for performance relating to any (1) technical requirements if appropriate, (2) management requirements, and (3) cost functions as selected for evaluation. The Contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated will be given such consideration as the Fee Determination Official shall find appropriate.
- (c) The award fee plan may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

H.32. COOPERATION WITH OTHER SITE CONTRACTORS

- (a) The DOE may have or undertake or award other prime contracts for additional work at the site (WVDP). Such prime contracts may be for the following activities, including but not limited to conducting decontamination, demolition, and waste management activities (other than those specified in the PWS). In the event of the above, the Contractor's activities to be performed under this contract will also be in support of these activities, including but not limited to ISMS oversight, infrastructure services and access to other facilities and systems.
- (b) The Contractor shall fully cooperate with the other prime contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the work being performed under the other contract, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will

interfere with the performance of work by any other contractor or by Government employees.

- (c) The Contractor shall cooperate in a timely manner with DOE and its other prime contractors or other entities performing work at the site. Cooperation includes, but is not limited working together to resolve interface and work performance issues; establishing schedules to support accommodation the work being performed under the other contract(s); establishing work groups, participating in meetings, providing access to applicable technical and contract information and data such as schedule and milestone data; discussing technical matters related to the WVDP, providing access to Contractor facilities or areas. The Contractor shall ensure that its activities in support of the other prime contractors are fully coordinated with DOE and the other prime contractors.
- (d) The Contractor is not authorized to direct any other DOE contractor, except as specified elsewhere in this contract or as directed by the Contracting Officer. The contracting officer has the authority to direct the Contractor to cease interference in the activities of the other prime contractors.
- (e) The Contractor shall immediately notify the Contracting Officer if its activities will interfere with any of the DOE contractors or if there is an interference or conflict with any of the DOE contractors in performance of the Contractor's activities in support of the DOE or another DOE contractor.

H.33. MENTOR-PROTÉGÉ PROGRAM

- (a) Both the DOE and the Small Business Administration (SBA) have established Mentor-Protégé Programs to encourage Federal prime contractors to assist small businesses, firms certified under Section 8(a) of the Small Business Act by the SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Within 90 days of contract award and continuing throughout the Contract period of performance, the Contractor shall mentor at least one active Protégé company through the DOE and/or SBA Mentor-Protégé Programs. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract.
- (b) DOE Mentor-Protégé Agreements shall be in accordance with Department of Energy Regulation (DEAR) 919.70.
- (c) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

H.34. COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to: (1) obtain the Contracting Officer's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and (3) have IPv6 technical support for development and implementation and fielded product management available.

Should the Contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

H.35. CRITICAL SUBCONTRACTS – DESIGNATION AND CONSENT

The following subcontracts have been determined to be critical subcontracts:

(Name of company(s))

The above subcontracts require notification to, and consent by, the Contracting Officer regardless of any exceptions that may be stated in the Subcontracts clause of this contract. Consent of these subcontracts is retained by the Contracting Officer and will not be delegated. The Contracting Officer may unilaterally designate additional subcontracts as "critical" without such action constituting a basis for adjustment to any other terms of the contract.

H.36. SALES AND USE TAXES

As a contractor on a contract issued by the DOE, the awardee will not be considered an agent of DOE. Based upon the decision of the State of New York Tax Appeals Tribunal in West Valley Nuclear Services Co., Inc., DTA No. 811511 (1998), the Contractor will have to pay sales and use taxes as required under Section 1116 (a) (2) of the New York State Tax Law on purchases of certain goods and services required under the contract.